

## **REMARKS/ARUGMENTS**

Claims 1, 2 and 4-39 remain in the application. Claims 1, 2, 4, 10 and 27 have been amended. Claim 3 has been canceled. Claims 5 and 20-26 are withdrawn from consideration. Claims 12 and 29 have been allowed. Claim 29 has been amended to insert "wall" inadvertently omitted following "chamber".

Applicants appreciate the courtesies extended to applicants' attorney in the telephone interview with the Examiner on July 16, 2008. Claims 1, 2, 4, 10 and 27 have been amended as discussed in the course of the interview. Applicants' attorney provided proposed amendments to claims 1, 2, 4, 10 and 27 prior to the interview and discussed the proposed amendments and the prior art of record. Applicants' attorney submitted that the proposed amendments respond to the Examiner's suggested amendment to independent claim 1 in the Office Action dated April 28, 2008 and to discussions with the Examiner in the course of the interview. Applicants' attorney respectfully submitted that the proposed amendments place claims 1, 2, 4, 6-11, 13-19 and 27, 28 and 30-39 in condition for allowance with allowed claims 12 and 29 for all the reasons set forth below.

Further as discussed in the interview applicants respectfully request that with allowance of generic claims 1, 18 and 19 non-elected species claims 5 and 20-26 should be considered. Applicants have proposed amendments to claims 20, 23 and 26 consistent with the amendments to claims 1 and 27. Accordingly, applicants respectfully submit that non-elected species claims 5 and 20-26 should be allowed with elected claims 1, 2, 4, 6-19 and 27-39.

### **The 35 U.S.C. 103 Rejections**

Claims 1, 6-11 and 19 stand rejected under 35 U.S.C. 103(a) as being obvious over Hoffman et al, U.S. Patent No. 5,320,120 (Hoffman) in view of Cushing et al, U.S. Patent 4,150,679 (Cushing). The rejection is respectfully traversed. Claims 1 and 10 have been amended.

Claim 1 has been amended to more clearly point out that the filter chamber is provided on an exterior surface of a wash chamber sidewall and comprises a chamber wall

and the exterior surface of the sidewall of the wash chamber that form the filter chamber. The sidewalls of the dishwasher comprise an interior surface forming a sidewall of the wash chamber and an exterior surface.

Standards for *prima facie* obviousness.

“To establish a *prima facie* case of obviousness, “the examiner must then make a determination whether the claimed invention “as a whole” would have been obvious at that time to that person. Knowledge of applicants disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the “differences” conduct the search and evaluate the “subject matter as a whole” of the invention.” See MPEP § 2142, Rev. 6, Sept. 2007. “Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d, 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching test as a guard against using hindsight in an obviousness analysis)”. See MPEP § 2143.01, Rev. 6, Sept. 2007. “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) (emphasis added). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). See MPEP § 2143.03, Rev. 6, Sept. 2007.

The Examiner stated that “Hoffman discloses a dishwasher having a wash chamber (17), pump (19), spray arm (26), filter chamber in a wall (32), inlet (30), porous filter element (31) which also has the outlet for the fluid to flow back into the wash chamber (col. 3, line 11 – col. 4, line 5). It can be seen that the filter is provided external to the wash chamber ...”; and “... The floor of the wash chamber (16) is lower than the filter chamber and therefore is part of the wall region”, Office Action, page 3.

The Examiner further stated that “Hoffman does not teach the filter chamber in the plane of the wall with a non-linear portion guiding flowing into the filter; however, Cushing et al. teaches a bypass filter arrangement where the filter is in the “plane” of the sidewall (liquid flows vertically through holes 38 ...), Office Action page 3.

Applicants respectfully submit that Hoffman discloses a dishwasher “... including a box like housing 11 ... [and that] ... housing 11 and door 15 define a wash chamber 17 ...”

(emphasis added), Hoffman, col. 2, lines 36 – 68. Further, Hoffman discloses “A filter mechanism 28 is positioned along the junction of the bottom wall 16 and a side wall 29 [of housing 11], which conveniently may be the rear wall opposite the door 15. Conveniently the filter 28 includes an open top 30 adjacent the side wall 29 and a filter element 31 facing the wash chamber 17 and slanted slightly from the vertical”, Hoffman, col. 3, lines 38 – 44. Further, referring to Hoffman Figs. 2 and 3 it is clear that filter mechanism 28 is inside wash chamber 17 formed by housing 11 and door 15. Applicants respectfully submit that the Examiner can not reconfigure elements of Hoffman to enable the Examiner to apply Hoffman to the elements of claim 1. Specifically, Hoffman specifies that the wash chamber 17 is defined by housing 11 and door 15, and clearly filter 28 is inside the wash chamber as defined by Hoffman.

Applicants respectfully submit that Cushing, like Hoffman, discloses “... a soil-removal means 82 in the form of a receptacle 30 having a trough 31 disposed in the path of recirculation of liquid within the washing chamber 12 ... soil-removal means further includes the filtering means 32 contiguous to the trough 31 ...”, Cushing, col. 4, lines 8-14. Further, Cushing discloses that “... filtering screen 32 is disposed at approximately a 45° angle with reference to the back wall 34 of the wash chamber 12 ...”, Cushing, col. 4, lines 38-40. Thus, Cushing discloses a dishwasher having a filter chamber in the dishwashing chamber that is generally the same as Hoffman and accordingly fails to cure any of the deficiencies of Hoffman.

There is nothing in Hoffman or Cushing disclosing or suggesting a “... a wash chamber defined by a floor and a plurality of sidewalls each having an interior surface forming a sidewall of the wash chamber and an exterior surface, ... a filter chamber provided on the exterior surface of one of the wash chamber sidewalls for filtering wash liquid being circulated in said wash chamber comprising: a chamber wall and the exterior surface of said one of said sidewalls forming the filter chamber; an inlet opening in said one of said sidewalls, wherein said one of said sidewalls has a non-linear portion above said inlet opening for allowing wash liquid being circulated in said wash chamber to enter said filter chamber; an outlet opening in said one of said sidewalls communicating with said filter chamber for allowing wash liquid in said filter chamber to return to said wash chamber; and a filter element provided substantially in the plane of said one of said sidewalls at said outlet opening ...” (emphasis added), as now set forth in claim 1.

In sum, Hoffman alone or in combination with Cushing simply does not disclose or suggest a dishwasher having: 1) sidewalls having an interior surface forming a sidewall of the wash chamber and an exterior surface (applicants recognize that Hoffman and Cushing do disclose a housings that have sidewalls that have an exterior surface, but neither Hoffman nor Cushing disclose or suggest a filter chamber on and including the exterior surface of a sidewall as now set forth in claim 1); 2) a filter chamber provided on the exterior surface of a wash chamber sidewall comprising a chamber wall and the exterior surface of one of said sidewalls forming the filter chamber; 3) an inlet opening in said one of said sidewalls communicating with said filter chamber, wherein said one of said sidewalls has a non-linear portion above the inlet opening for allowing wash liquid circulated in said wash chamber to enter said filter chamber; 4) an outlet opening in said one of said sidewalls communicating with said filter chamber for allowing wash liquid in said filter chamber to return to said wash chamber; and 5) a filter element provided substantially in the plane of said one of said sidewalls at said outlet opening.

Applicants respectfully submit that *prima facie* obviousness of applicants' invention "as a whole" is not established since the teachings of Hoffman alone or in combination with Cushing do not disclose or suggest the claimed invention as set forth in claim 1. As noted above all words in a claim must be considered in judging the patentability of that claim against the prior art. Obviousness is established where there is some teaching, suggestion, or motivation to do so, without reference to applicants' disclosure. Applicants respectfully submit the elements of claim 1 are not disclosed or suggested by Hoffman and/or by Cushing for all the reasons set forth above. Further as noted above, if an independent claim is unobvious then all dependent claims are unobvious. Accordingly, applicants respectfully submit that the rejection of claim 1 and dependent claims 6-11 and 19 as being unpatentable over Hoffman in view of Cushing under 35 U.S.C. 103(a) is defective for failing to establish *prima facie* obviousness of claims 1, 6-11 and 19, and should be withdrawn.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Price et al, Publication No. US 2003/0213505 A1 (Price). The rejection is respectfully traversed. Claims 2 and 4 have been amended consistent with claim 1. Claim 3 has been canceled as the limitations of claim 3 are now present in claim 2. The standards for judging obviousness are set forth above and repeated with respect to claims 2 and 4.

As set forth above in detail with respect to claim 1 there is nothing in Hoffman or Cushing disclosing or suggesting a "... a wash chamber defined by a floor and a plurality of sidewalls each having an interior surface forming a sidewall of the wash chamber and an exterior surface, ... a filter chamber provided on the exterior surface of one of the wash chamber sidewalls for filtering wash liquid being circulated in said wash chamber comprising: a chamber wall and the exterior surface of said one of said sidewalls forming the filter chamber; an inlet opening in said one of said sidewalls, wherein said one of said sidewalls has a non-linear portion above the inlet opening for allowing wash liquid being circulated in said wash chamber to enter said filter chamber; an outlet opening in said one of said sidewalls communicating with said filter chamber for allowing wash liquid in said filter chamber to return to said wash chamber; and a filter element provided substantially in the plane of said one of said sidewalls at said outlet opening ..." (emphasis added), as now set forth in claim 1. Accordingly, Hoffman alone or in combination with Cushing is defective for all the reasons set forth above with respect to claim 1.

As noted by the Examiner, "Hoffman, as modified by Cushing et al. does not disclose a wall portion curving inwardly but does disclose gathering surfaces. Price discloses a "walls to the chamber curving inwardly", Office Action, page 5.

Applicants respectfully submit that Price discloses a dishwasher having a washing vessel 213 that includes "... a recirculated wash and/or rinse liquor collection tray, 239, for collecting recirculated wash and/or rinse liquor, 230, an optional filter, 244, for screening food debris, and an inlet port, 238, and an outlet port, 237", Price, [0056]. See also Fig. 1a. Further, Price discloses that the dishwashing appliance "... can also contain a recirculating cell, 235, for producing electrolyzed, recirculated wash and/or rinse liquor, 260 from recirculated wash and/or rinse liquor, 230 to recirculating cell, 235, a filter, 244, covering the inlet port, 238, of the recirculated wash and/or rinse liquor collection tray, 239 ...", Price [0058]. Applicants respectfully submit it is clear that Price discloses collection tray 239 extending into the washing vessel 213 that collects and directs recirculated wash and/or rinse liquor 230 into recirculating cell 235. Thus, not only does Price fail to disclose or suggest a filter chamber outside the wash chamber (filter 244 is clearly positioned in the washing vessel 213), but Price fails to disclose or suggest an inlet opening curving into the filter chamber for allowing wash liquid being circulated to enter the filter chamber since Price specifically

discloses that collection tray 239 extends into washing vessel 213 "... for collecting recirculated wash and/or rinse liquor ...", Price [0056].

Applicants respectfully submit that Price fails to disclose or suggest a dishwasher having "... an inlet opening in said one of said sidewalls communicating with said filter chamber, wherein said one of said sidewalls has a non-linear portion above the inlet opening for allowing wash liquid being circulated ... to enter said filter chamber ... an outlet opening in said one of said sidewalls communicating with said filter chamber for allowing wash liquid in said filter chamber to return to said wash chamber; a filter element provided substantially in the plane of said one of said sidewalls ...", as set forth in claim 1 as currently amended; or that the "... inlet opening is formed by a first wall portion of said one of said sidewalls above said inlet opening curving into said filter chamber and a second wall portion below said inlet opening generally in the plane of said one of said sidewalls, and said outlet opening is formed in said second wall portion", as set forth in claim 2; or that "... said one of said sidewalls has liquid gathering surfaces formed on said at least one of said sidewalls for directing wash liquid flowing down said at least one of said sidewalls into said inlet opening", as set forth in claim 4. Accordingly, Price fails to disclose or suggest a dishwasher as set forth in claims 2 and 4.

Applicants respectfully submit Price discloses or suggests nothing to cure the deficiencies of Hoffman and Cushing with respect to claim 1, much less with respect to claims 2 and 4. Applicants respectfully submit that *prima facie* obviousness of applicants' invention "as a whole" is not established since the teachings of Hoffman as modified by Cushing in view of Price do not disclose or suggest the claimed invention in claims 2 and 4 including claim 1 on which claims 2 and 4 depend. As noted above all words in a claim must be considered in judging the patentability of that claim against the prior art. Applicants respectfully submit the elements of claim 1 are not disclosed or suggested by Hoffman in combination with Cushing for all the reasons set forth above. Further, applicants respectfully submit that the elements of claims 2 and 4 are not disclosed by Hoffman as modified by Cushing in view of Price for all the reasons set forth above. Further, applicants respectfully submit that claim 1 is nonobvious for all the reasons set forth above, and accordingly, dependent claims 2 and 4 are nonobvious.

Accordingly, applicants respectfully submit that the rejection of claims 2 and 4 as being unpatentable over Hoffman and Cushing in view of Price under 35 U.S.C. 103(a) is

defective for failing to establish *prima facie* obviousness of claims 2 and 4, and should be withdrawn.

Claims 16, 17, 27, 31-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Cushing et al. and the Applicants' specification. The rejection is respectfully traversed. The standards for judging unobviousness are set forth above and repeated with respect to claims 16, 17, 27 and 31-39.

The Examiner stated that "Hoffman as modified by Cushing et al., does not teach a sump screen, strainer or sensors detecting the liquid level of the filter chamber", Office Action, page 6. Applicants respectfully point out that applicants' specification provides "When sump screen 22 is part of a conventional dishwasher filter arrangement, filter 15 can be arranged to be a fine filter to filter finer material [than] the sump screen and filter. Likewise those skilled in the art will recognize that filter 15 can be used alone without any other filter associated with the circulation pump." Specification [0026]. The Examiner has cited no prior art reference disclosing or suggesting combining a filter chamber outside the wash chamber as set forth in claim 1 with a sump screen and strainer as set forth in claims 16 and 17 other than applicants' specification. Applicants respectfully submit that claim elements and the rationale for combining prior art teachings must come from the prior art and not applicants' specification as set forth above.

Further, the Examiner stated "The specification also describes, "[liquid level] sensors 107, 107' can be optical sensors, turbidity sensors or pressure sensors as are well known in the art ... US Patent 6909743 and US Patent 6103017, each incorporated by reference, disclose the use of pressure sensors to automatically initiate a filter purge cycle in dishwashers." Paragraph [0036]. Office Action pages 6-7. The Examiner has cited no prior art reference disclosing or suggesting combining a filter chamber provided on an exterior surface of a wash chamber sidewall as set forth in claim 27 with sensors for the filter chamber as set forth in claims 27 and 31 - 34 other than applicants' specification. As set forth above, applicants respectfully submit that the rationale for combining prior art teachings must come from the prior art and not applicants' specification.

As set forth above in detail with respect to claim 1 while Hoffman discloses a dishwasher having a filter, there is nothing in Hoffman or Cushing disclosing or suggesting a

“... a wash chamber defined by a floor and a plurality of sidewalls each having an interior surface forming a sidewall of the wash chamber and an exterior surface, ... a filter chamber provided on the exterior surface of one of the wash chamber sidewalls for filtering wash liquid being circulated in said wash chamber comprising: a chamber wall and an exterior surface of one of said sidewalls forming the filter chamber; an inlet opening in said one of said sidewalls, wherein said one of said sidewalls has a non-linear portion above the inlet opening for allowing wash liquid being circulated in said wash chamber to enter said filter chamber; an outlet opening in said one of said sidewalls communicating with said filter chamber for allowing wash liquid in said filter chamber to return to said wash chamber; and a filter element provided substantially in the plane of said one of said sidewalls at said outlet opening ...” (emphasis added), as now set forth in claim 1 and 27. Further, there is nothing in Hoffman or Cushing disclosing or suggesting “... a sump screen for filtering wash liquid flowing to said pump for circulating wash liquid”, as set forth in claim 16; or “... [a] sump screen [that] includes a strainer for collecting large particle filtered from said wash liquid by said sump screen”, as set forth in claim 17; at least one sensor for sensing the liquid level in said filter chamber and connected to said control for draining wash liquid and material filtered by said filter in said filter chamber in response to sensing wash liquid rising to a predetermined level in said filter chamber”, as set forth in claim 27; or any of the additional limitations relating to the sensor set forth in claims 31-34; or any of the limitations relating to the filter element, control and fill valve, or liquid spray member set forth in claims 35-39.

Applicants respectfully submit that the elements of the claimed invention and rationale for combining prior art teachings must come from the prior art and not applicants’ specification. Absent applicants’ specification there is no teaching or suggestion to combine a filter chamber outside the wash chamber as set forth in claims 1 and 27 with a sump screen and strainer as set forth in claims 16 and 17. Similarly, absent applicants’ specification there is no teaching or suggestion to combine a filter chamber outside the wash chamber as set forth in claim 27 with sensors as set forth in claims 27 and 31- 34 and the additional limitations relating to the filter element, control and fill valve, or liquid spray member set forth in claims 35-39.

Thus, Hoffman as modified by Cushing is defective for all the reasons set forth above with respect to claims 16, 17, 27, 31-39 and further as set forth above with respect to claim 1. In addition Examiner’s reliance on applicants’ specification as a teaching to combine a sump



screen, strainer, sensors, control and liquid spray member is defective for all the reasons set forth above. Further, applicants respectfully submit that claims 1 and 27 are nonobvious for all the reasons set forth above, and accordingly, dependent claims 16, 17, and 31-39 are nonobvious.

Accordingly, applicants respectfully submit that the rejection of claims 16, 17, 27 and 31-39 as being unpatentable over Hoffman in view of Cushing and applicants' specification under 35 U.S.C. 103(a) is defective for failing to establish *prima facie* obviousness of claims 16, 17, 27 and 31-39, and should be withdrawn.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Cushing and further in view of Sargeant U.S. Patent No. 5,743,281 (Sargeant). The rejection is respectfully traversed. The standards for judging unobviousness are set forth above and repeated with respect to claim 18.

Applicants respectfully submit that the combination of Hoffman and Cushing is defective for all the reasons set forth above relative to claim 1 on which claim 18 depends. Applicants acknowledge that drawer dishwashers are known, however, nothing in Hoffman, Cushing or in Sargeant teaches or suggest combining a filter chamber provided on an exterior surface of a wash chamber sidewall as set forth in claim 1 with a drawer dishwasher as set forth in claim 18. Further, applicants respectfully submit that claim 1 is nonobvious for all the reasons set forth above, and accordingly, dependent claim 18 is nonobvious.

Accordingly, applicants respectfully submit that the rejection of claim 18 as being unpatentable over Hoffman in view of Sargeant under 35 U.S.C. 103(a) is defective for failing to establish *prima facie* obviousness of claim 18 and should be withdrawn.

Claims 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Cushing and applicants' specification as applied to claims 16, 17, 27 and 31-39 above, and further in view of Thies et al, US Patent No. 5,909,743 (Thies). The rejection is respectfully traversed. The standards for judging unobviousness are set forth above and repeated with respect to claims 28 and 30.

The Examiner stated that "... it would have been obvious to one of ordinary skill in the art to modify Hoffman, as modified by Cushing et al. and Applicants' spec. with the pump arrangement shown by Thies ...", Office Action, page 9.

As set forth above in detail, Hoffman as modified by Cushing fails to disclose or suggest a dishwasher having a filter chamber provided on an exterior surface of a wash chamber sidewall as set forth in claim 27 on which claims 28 and 30 depend. Further, as set forth above in detail, prior art teachings, not applicants' disclosure must be the basis for establishing obviousness. Accordingly, applicants' specification can not be relied on to modify Hoffman and Cushing. Similarly, Thies fails to disclose or suggest a dishwasher having a filter chamber provided on the exterior surface of a wash chamber sidewall as set forth in claim 27 and accordingly fails to remedy any of the deficiencies of Hoffman and Cushing. Specifically, neither Hoffman, Cushing nor Thies discloses or suggests "... wherein said at least one pump for draining wash liquid comprises a first drain pump connected to said wash chamber drain and a second drain pump connected to said filter chamber outlet, and said control selectively operates said first drain pump for draining said wash chamber and selectively operates said second drain pump for draining said filter chamber, as set forth in claim 30. Further, applicants respectfully submit that claim 27 is nonobvious for all the reasons set forth above, and accordingly, dependent claims 28 and 30 are nonobvious.

Accordingly, applicants respectfully submit that the rejection of claims 28 and 30 as being unpatentable over Hoffman and applicants' specification in view of Thies under 35 U.S.C. 103(a) is defective for failing to establish *prima facie* obviousness of claims 28 and 30 and should be withdrawn.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Cushing et al. and Thies et al US Patent No. 5,909,743 (Thies). The rejection is respectively traversed. The standards for judging unobviousness are set forth above and repeated with respect to claims 13-15.

The Examiner stated "Thies discloses a pump for the filter chamber (54) along with a pump for draining the washing chamber (34). At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Hoffman, as modified by Cushing et

al., with the pump arrangement shown by Thies for the benefit of a flow control of the filtered material", Office Action, page 10.

Applicants respectfully submit that Hoffman as modified by Cushing is defective for all the reasons set forth above relative to claim 1 on which claims 13-15 indirectly depend. Thies fails to suggest or disclose a filter chamber outside the wash chamber arrangement as set forth in claim 1 and accordingly fails to cure any of the deficiencies of Hoffman and Cushing with respect to claim 1. Thies discloses "... drain pump 54 is separate from wash pump 28, the purging of soils from the soil accumulator 50 ... can be accomplished while wash pump impeller 32 continues to recirculate wash liquid ...", col. 5, lines 61 – 65; and that "... drain pump 54 can drain the sump region 18 by drawing wash liquid through drain port 62", col. 6, lines 28 – 30. Thus, Thies discloses a single drain pump 54 similar to Hoffman. Applicant respectfully submits that Thies and Hoffman modified by Cushing fail to disclose or suggest any of the limitations relating to the drain pump set forth in claims 13 – 15.

Accordingly, Hoffman as modified by Cushing and Thies fails to suggest or disclose all the elements set forth in claims 13-15 in addition to failing to disclose or suggest the filter chamber provided on the exterior surface of a wash chamber set forth in claim 1. Further, applicants respectfully submit that claim 1 is nonobvious for all the reasons set forth above, and accordingly, dependent claims 13-15 are nonobvious.

Accordingly, applicants respectfully submit that the rejection of claims 13-15 as being unpatentable over Hoffman in view of Thies under 35 U.S.C. 103(a) is defective for failing to establish *prima facie* obviousness of claims 13-15 and should be withdrawn.

It is respectfully submitted that claims 1-4, 6-11, 13-19, 27, 28 and 30-39 are allowable over the prior art of record. Claims 12 and 29 are allowed. Early notification of allowability of claims 1, 2, 4, 6-19 and 27-39 is respectfully requested. Further, as noted above, non-elected claims 5 and 20-26 should now be considered and are believed to be allowable for the same reasons as claims 1 and 27.

Respectfully submitted,

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